Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1041 (MS) OF 2004

Pradeep Kumar, son of Sri Ram Prakash Gupta, resident of Bareilly Road, Town Haldwani, District Nainital.

.....Petitioner.

Versus

1. Rakesh Kumar Agarwal, son of Sri Jagdish Prasad Agarwal, resident of Bhola Nath Garden, Town Haldwani, District Nainital.
2. State of Uttaranchal, through Collector, Nainital.
3. Gram Sabha, Kamaluaganja Narsingh Talla, Tehsil Haldwani, District Nainital. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Sudhir Kumar, counsel for the petitioner and Sri K.N. Joshi counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 19.07.2004 passed by the Assistant Collector, Ist Class/Sub-Divisional Officer, Haldwani, District Nainital in Revenue Suit No. 22/257 of 2004 under Section 229 (B) of U.P.Z.A. & L.R. Act.

Briefly stated, the suit was filed by Sri Rakesh Kumar Agarwal against Pradeep Kumar and others including State as well as Gram Sabha by impleading them as respondent no. 3 and 4.

The relief was sought by the plaintiff for a declaration in respect of certain plots. Paragraphs 9 and 10 (अ) are quoted below:-

९. यह कि प्र नगत भूमि न्यायालय श्रीमान के क्षेत्राधिकार के अर्न्तगत स्थित है। न्यायालय श्रीमान को मामले को समाप्त करने व सूनने एवं निर्णय लेने का क्षेत्राधिकार प्राप्त है।

10. यह कि वादी निम्न अनुतोश पाने का अधिकारी है।

१० (अ) यह कि डिक्री वादी विरूद्व प्रतिवादी इस अमर की शादिर फरमा दी जाय क ग्राम कमलुआगांजा नर सिंह तल्ला, तहसील हल्द्वानी के खेत नम्बरान 162 मि. स्कबर्ड 0.07 हैक्टर, 161 मि. स्कबर्ड 0.057 हैक्टर, 160 स्कबर्ड 1.049 हैक्टर, 159 स्कबर्ड 0.044 हैक्टर, 158 स्कबर्ड 1.011 हैक्टर, 157 स्कबर्ड 0.054 हैक्टर, 156 स्कबर्ड 1. 157 हैक्टर, 155 स्कबर्ड 0.051 हैक्टर, 154 स्कबर्ड 0.616 हैक्टर कुल स्कबर्ड 4.109 हैक्टर भूमि का वादी जो वर्माक संक्रमणीय भूमिथर घोशित किया जाये और मान अभिलेखों से श्रीमती पूनम का नाम निरस्त कर उनके स्थान पर वादी का नाम वर्गाक संक्रमणीय भूमिधर में दर्ज अभिलेख कर दिया जाय।"

During the pendency of the suit, the petitioner has filed an application under Section 229-B of the U.P. ZA & LR Act. The respondent no. 1 has also filed an application under Section 80(2) of the C.P.C. on 19th July, 2004. The said application was disposed of by allowing the same. Exemption was granted in respect of the notice, which is required for two months. The Presiding Officer has also passed order restraining the respondents from making any alteration in the property in dispute or changing the nature of the property.

Counsel for the petitioner has submitted that Section 80 of the Code of Civil Procedure contains a provision of the service of notice and that the Court shall not grant relief of suit whether interim order otherwise except after giving to the Government or Public Officer reasonable opportunity of showing cause in respect of the relief prayed for.

Sub Section (2) of Section 80 of the Code of Civil Procedure Provides as under:-

"(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirement of subo-section (1)."

A perusal of the record shows that the permission has been granted to file the suit under Section 80(2) of the Code of Civil Procedure on an application file by the plaintiff. In paragraph 3 of the application, it has been stated that he is a Bhoomidhar but his name has not been recorded and Smt. Poonam continues to be in unauthorized occupation and the defendant has no concern. The plaintiff has also claimed for

relief of injunction by filing the suit U/s 229-D of the U.P. Z.A. & L.R. Act. Sub clause (b) of Section 229-D reads as under:-

"(b) *that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction, and where necessary, also appoint a receiver.]*"

The present dispute, therefore, is confined between the plaintiff and the defendant and the suit has been filed against the private defendant although the State has been impleaded as a necessary party. So far as the objections with regard to the requirement of Section 80 (2) of the Code of Civil Procedure is concerned, liberty is given to the petitioner to raise the objections in his written statement and if such an objection is taken, the same shall be decided by the trial court while deciding the suit itself.

The order impugned dated 19th July, 2004 has been passed granting the injunction. Liberty is given to the petitioner to file the objections by filing an application for vacating the injunction order. The order impugned dated 19th July, 2004 being inter-locutary in nature, the Assistant Collector has fixed 4th August, 2004 for filing the written statement. The entire pleas can very will be taken in the written statement. Liberty is also given to the defendant to file the objection on the injunction application as well. Sub Clause (2) of Section 80 only permits the plaintiff to institute the suit with the leave of the court without serving any notice as required under Sub-section (1). The present leave having been granted in favour of

the plaintiff, it will be open for the defendant to raise the objections during the trial of the suit.

Consequently, subject to the aforesaid observations made above, writ petition is dismissed at this stage. No order as to costs.

Dt. 22.12.2004 (RAJESH TANDON, J.)

P.S.R.